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PRESIDING OFFICER'S
RULING NO. MC96-3/35

POSTAL RATE COMMISSION
UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Special Services Fees and Classifications

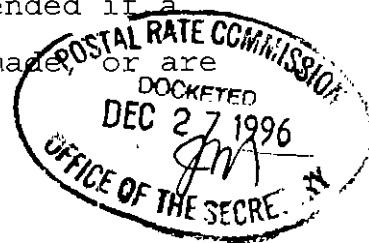
Docket No. MC96-3

PRESIDING OFFICER'S RULING DENYING MOTIONS OF DAVID B.
POPKIN TO COMPEL COMPLIANCE WITH RULE 25E, TO COMPEL
CORRECTIONS TO TESTIMONY, AND TO PERMIT WRITTEN
INTERROGATORIES TO POSTAL SERVICE REBUTTAL TESTIMONY

(December 26, 1996)

On December 13, 1996, the Commission received the Motion of David B. Popkin to Compel Compliance with Rule 25(e) (Compliance Motion), the Motion of David B. Popkin to Compel Corrections to Testimony (Correction Motion), and the Motion of David B. Popkin to Permit Written Interrogatories to Postal Service Rebuttal Testimony (Motion to Permit). These motions are denied.

Compliance and Correction Motions. The Postal Service published a notice in the FEDERAL REGISTER on October 23, 1996, announcing the transfer or rescission of specified regulations in the Domestic Mail Manual Transition Book (DMMT). Most of the transferred regulations were relocated to the Postal Operations Manual (POM). Several Postal Service witnesses referred to DMMT regulations in their testimony or discovery responses, most notably, Postal Service witness Needham. See USPS-T8 at 118, 120-21. Rule 25(e) of the Commission's Rules of Practice requires that interrogatory answers be seasonably amended if a witness becomes aware that they were incorrect when made, or are



no longer correct. Mr. Popkin argues that the Postal Service is obliged under this rule to update its witnesses' obsolete citations of the DMMT to the appropriate current POM section, and to evaluate each of the changes in the transferred regulations to ensure that its witnesses' original answers do not need substantive revision. Compliance/Correction Motions at 2.

On December 11, 1996, the Postal Service filed a Notice Concerning Status of Regulations Published in the Domestic Mail Manual Transition Book (DMMT Notice). The DMMT Notice explained that the Postal Service had published the FEDERAL REGISTER notice of October 23, 1996, transferring numerous regulations to the POM. The DMMT Notice announced that the Postal Service was filing the latest edition of the POM as LR-SSR-161 in this docket. Attached to the DMMT Notice were cross-reference tables to allow interested parties to locate the renumbered regulations. The DMMT Notice commented that the Postal Service had concluded that none of the oral or written discovery responses provided by its witnesses were affected by the few substantive changes made in the transferred regulations, including POM § 653.6 (formerly DMMT § 156.25). DMMT Notice at 2, n.1.

The Postal Service filed its Answer in Opposition to Motions of David B. Popkin to Compel Compliance with Rule 25(e) and Corrections to Testimony, on December 19, 1996 (Answer to Compliance/Correction Motions). In it, the Postal Service argues that its DMMT Notice should allay Mr. Popkin's concerns that the changes in the DMMT regulations transferred may have affected the substance of its witnesses' discovery responses. Answer to Compliance/Correction Motions at 2.

Mr. Popkin dated his Compliance/Correction Motions December 11, 1996, the same day that the Postal Service filed its DMMT Notice. These Motions appear to have been framed without the benefit of that Notice. The DMMT Notice explains why changes made to the regulations transferred from the DMMT should have no substantive effect on the discovery responses provided by its witnesses. The Postal Service's Answer to Compliance/Correction Motions at 3-4 expands on that explanation. Taken together, these explanations are sufficient to dispel any concerns that substantive revisions to the Postal Service's discovery responses might have been needed. The Postal Service will not be compelled to provide further explanation.

Motion to Permit. In his Motion to Permit Written Interrogatories to Postal Service Rebuttal Testimony, Mr. Popkin argues that because he does not live near Washington D.C., it would be "difficult to justify" making the trip in order to "clarify a few points" concerning the Postal Service's rebuttal testimony. He therefore asks permission to submit written interrogatories to the Postal Service's rebuttal witnesses. Motion to Permit at 3.

The Postal Service filed its Answer in Opposition to Motion of David B. Popkin to Permit Written Interrogatories to Postal Service Rebuttal Testimony (Answer), on December 19, 1996. In its Answer, the Postal Service argues that personal convenience is not sufficient reason for departing from the hearing schedule set forth in Attachment A to P.O. Ruling MC96-3/3, which provides that no discovery is to be permitted on . . . rebuttal evidence filed on December 6, 1996. Answer at 1. It also argues that the

Motion to Permit fails to specify what the subject matter of the requested written interrogatories would be, or even the witnesses to whom they would be directed. It argues that allowing open-ended written discovery at this late date would risk delay of the procedural schedule and timely closing of the record. Answer at 2.

The Postal Service's criticisms are valid under the circumstances. Mr. Popkin's Motion to Permit is denied. Some procedural flexibility is warranted when dealing with participants who represent themselves in our proceedings, and live far from Washington, D.C., where our hearings are held. Had Mr. Popkin accompanied his Motion to Permit with his proposed written interrogatories, there might have been time between the Friday when his Motion was received, and the following Monday when hearings began, for the Presiding Officer to devise a means of putting a few direct and germane questions to the appropriate witnesses, perhaps with the cooperation of the OCA. That potential opportunity has passed. There is not enough time remaining to accommodate the procedural departure proposed in Mr. Popkin's Motion to Permit, and still allow the record to be closed in a timely fashion.

RULING

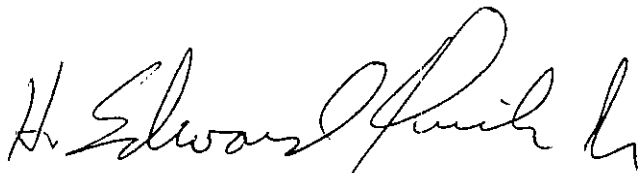
1. The Motion to Compel Compliance with Rule 25(e), filed by David B. Popkin on December 13, 1996, is denied.

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2. The Motion to Compel Corrections to Testimony, filed by David B. Popkin on December 13, 1996, is denied.

3. The Motion to Permit Written Interrogatories to Postal Service Rebuttal Testimony, filed by David B. Popkin on December 13, 1996, is denied.

A handwritten signature in cursive script, reading "H. Edward Quick, Jr.", written in dark ink.

H. Edward Quick, Jr.
Presiding Officer